

## Department of Veterans Affairs

819.602-3

(1) Notice of total small business set-aside, page \_\_\_\_, applies to all items in this solicitation.

(2) Notice of total small business set-aside, page \_\_\_\_, applies to items \_\_\_\_ through \_\_\_\_ in this solicitation.

(b) Contracting officers must ensure that appropriate product or service classification and the related size standard are included in each solicitation.

(c) All proposed procurement for construction anticipated to cost between \$10,000 and \$3 million and all proposed procurements for architect-engineer services construction projects of \$3 million and less will be considered as though SBA had initiated a set-aside request. Determinations of the need to deviate from this policy made by the head of a contracting activity will require review by the Director, Office of Small and Disadvantaged Business Utilization.

[49 FR 12608, Mar. 29, 1984, as amended at 50 FR 792, Jan. 7, 1985; 63 FR 69220, Dec. 16, 1998]

### 819.502-3 Partial set-asides.

When, in accordance with the provisions of FAR 19.502-3, it is determined that a particular procurement will be partially set aside for exclusive small business participation, the solicitation for bids shall state the appropriate product or service classification and appropriate size standard and the following statement shall be placed on the face page:

Notice of partial small business set-aside, page \_\_\_\_, applies to Item \_\_\_\_ through Item \_\_\_\_ in this solicitation.

[63 FR 69220, Dec. 16, 1998]

## Subpart 819.6—Certificates of Competency and Determinations of Eligibility

### 819.602-3 Appealing Small Business Administration's decision to issue Certificates of Competency.

Formal VA appeals of an initial concurrence by the SBA Central Office in an SBA Regional Office decision to issue a Certificate of Competency (CoC) will be processed as follows:

(a) When the contracting officer believes that VA should formally appeal the concurrence by the SBA Central

Office in an SBA Regional Office decision to issue a CoC, the contracting officer will so notify the Deputy Assistant Secretary for Acquisition and Materiel Management (95B) in writing within five business days after receipt of the SBA Central Office's written confirmation of its determination. Within ten business days of the contracting officer's receipt of the SBA's written confirmation (or within a period acceptable to VA and the SBA), the Deputy Assistant Secretary for Acquisition and Materiel Management (95B) will advise the SBA Central Office that VA intends to file a formal appeal.

(b) Within ten business days of the contracting officer's receipt of the SBA Central Office's written confirmation, the contracting officer will furnish an original and one copy of the appeal file to the Deputy Assistant Secretary for Acquisition and Materiel Management (95B). The file must contain a copy of the bid/offer from the firm considered nonresponsible, a copy of the bid/offer from the firm otherwise in line for award, a copy of the bid, a copy of the bid abstract, a copy of SBA's CoC Review Committee report, a copy of all correspondence with SBA on the matter, and the contracting officer's narrative statement establishing the error, omission, or other basis for disputing SBA's proposed responsibility determination.

(c) The Deputy Assistant Secretary for Acquisition and Materiel Management (95B) will review the file prepared by the contracting officer. If the contracting officer's position is accepted, the Deputy Assistant Secretary for Acquisition and Materiel Management (95B) will transmit the formal appeal to the SBA Central Office within ten business days after notifying that office of VA's intent to appeal (or within a period acceptable to VA and the SBA). The contracting officer will be informed of the final SBA decision.

(d) If, after the Central Office review, it is decided that a formal appeal should not be made to the SBA, the contracting officer will be advised of this decision and that the CoC should be accepted by VA. The SBA Central Office will also be advised that VA will

not pursue its formal appeal. If the decision concerns major construction projects and the Office of Facilities Management disagrees with the decision made by the Deputy Assistant Secretary for Acquisition and Materiel Management, the matter will be referred to the Senior Procurement Executive for a final VA determination.

[52 FR 46083, Dec. 4, 1987, as amended at 54 FR 40064, Sept. 29, 1989; 63 FR 69220, Dec. 16, 1998]

### **Subpart 819.8—Contracting With the Small Business Administration (The 8(a) Program)**

#### **819.800 General.**

(a) No contract will be entered into with SBA under section 8(a) of the Small Business Act (15 U.S.C. 637(a)) unless a certification is made by the Administrator of that agency, or designee, that SBA is competent to perform the contract.

(b) When it is determined that the requirements of the Department of Veterans Affairs are appropriate for inclusion in this program, the contracting officer will make this fact known to proper officials of the SBA regional office servicing his/her area. However, when projects funded from minor construction appropriation (between \$400,000 and \$2 million) are proposed for 8(a) acquisition, the Director, Office of Small and Disadvantaged Business Utilization (OSDBU) (00SB), shall be contracted by telephone or notified in writing in order to afford the OSDBU an opportunity to identify possible 8(a) sources prior to apprising SBA officials. If the certification required by paragraph (a) of this section is received, the Department of Veterans Affairs contracting officer will secure from SBA the name(s) and location(s) of their subcontractor(s) and the unit price(s) to be paid. Should these prices be within a range acceptable to the Department of Veterans Affairs, the contracting officer will notify SBA of acceptance.

(c) The contract will be made between the Department of Veterans Affairs and SBA and will be administered by the Department of Veterans Affairs.

(d) In addition to meeting the requirements of 801.602-70, contracting officers will secure cost and pricing data prescribed in FAR 15.403-4 and 815.804-2 when negotiating contracts under the SBA 8(a) program. Contracting officers will request an audit in accordance with 815.805-5 on proposals in excess of \$500,000 before negotiating any contract or modification.

[49 FR 12608, Mar. 29, 1984, as amended at 50 FR 792, Jan. 7, 1985; 54 FR 40064, Sept. 29, 1989. Redesignated and amended at 63 FR 69220, Dec. 16, 1998]

#### **819.803 Selecting acquisitions for the 8(a) program.**

The contracting officer will specify in writing the time limit for SBA to propose an acceptable 8(a) subcontractor. The time limit should be between 30 and 45 days, but may be extended by the contracting officer.

[50 FR 793, Jan. 7, 1985]

#### **819.804 Evaluation, offering, and acceptance.**

(a) The contracting officer will notify SBA in writing of the time limit for contract negotiations in accordance with FAR 19.804-2. The time limit, as a minimum, should be 45 days, but may be extended by the contracting officer.

[50 FR 793, Jan. 7, 1985, as amended at 63 FR 69220, Dec. 16, 1998]

#### **819.806 Pricing the 8(a) contract.**

In order to expedite the 8(a) process, SBA should be informed as soon as a disparity between the 8(a) offered price and the estimated fair market price is determined. The SBA and the VA contracting office should collaborate to determine if the disparity is:

(a) A result of deficiencies in developing the fair market price, thereby requiring revision to the estimate;

(b) A result of overpricing by the 8(a) company, thereby requiring further efforts to negotiate a decrease in the offered price; or

(c) A legitimate differential which should be funded through the SBA business development expense.

[52 FR 37317, Oct. 6, 1987. Redesignated at 63 FR 69220, Dec. 16, 1998]